

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

Dynamite Marketing, Inc.	)	
	)	Case No. 18-cv-7760
v.	)	
	)	Judge: Hon. John J. Tharp
THE PARTNERSHIPS and	)	
UNINCORPORATED ASSOCIATIONS	)	Magistrate: Hon. Young B. Kim
IDENTIFIED ON SCHEDULE "A"	)	
	)	
	)	

**DECLARATION OF GENE KOMISSAROV**

I, Gene Komissarov, of New York, NY, declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth herein. I make this declaration in support of Plaintiff's Ex Parte Motion for Entry of Temporary Restraining Order (the "Ex Parte Motion for TRO") and, if called as a witness, I could and would competently testify as follows:

2. I am the CEO of the Plaintiff, Dynamite Marketing, Inc., the manufacturer and distributor of the Key Ninja and Wallet Ninja products.

3. Dynamite Marketing, Inc. purchased the Key Ninja and Wallet Ninja products and marks from the inventor, Vante which developed the Wallet Ninja in 2013 and the Key Ninja in 2015.

4. Since their invention, the Key Ninja and Wallet Ninja brand products have grown considerably in market share. They have been sold around the world via distributors and retail outlets and have sold millions of units around the globe.

5. Each year, Vante and Dynamite Marketing invests hundreds of thousands of dollars in advertising its unique products. The Key Ninja and Wallet Ninja feature a unique

designand distinctive packaging. Over the life of the product, Vante and Dynamite Marketing have invested millions to market and promote the Key Ninja and Wallet Ninja brand products around the world.

6. Dynamite Marketing is an internationally recognized manufacturer, distributor ofKey Ninja and Wallet Ninja tools, which are marketed and sold under its federally registered Key Ninja and Wallet Ninja trademarks. The Key Ninja and Wallet Ninja Productshave become enormously popular, driven by our quality standards and innovative design. The product is identifiable via the Key Ninja and Wallet Ninja marks and the distinctive look of the product itself and the product packaging.

7. Since 2018, Plaintiff has sold the Key Ninja and Wallet Ninja products via authorized distributors and retailers on the world wide web, where it promotes and sells genuine Key Ninja and Wallet Ninja Products to consumers. Online sales of Key Ninja and Wallet Ninja Products via the web represent a significantportion of our business.

8. The Key Ninja and Wallet Ninja mark is exclusive to the Dynamite Marketing and is displayed extensively on Key Ninja and Wallet Ninja Products and in our marketing and promotional materials. Key Ninja and Wallet Ninja Products have long been among the most innovative accessories the world and have been extensively promoted and advertised at great expense to Dynamite Marketing.

9. The Key Ninja and Wallet Ninja Trademarksare distinctive when applied to Key Ninja and Wallet Ninja Products, signifying to the purchaser that the products come from Dynamite Marketing and are manufactured to the their quality standards. Whether Dynamite Marketing manufactures the products itself or licenses others to do so, it has ensured that products bearing its trademarks are manufactured to the highest quality standards. As such, the goodwill associated with the Key Ninja and Wallet Ninja trademarks is of incalculable and inestimable

value.

10. Dynamite Marketing has received extensive editorial coverage and unsolicited press in various magazines and other publications throughout the world. Key Ninja and Wallet Ninja products have been featured in various newspapers and magazines, as well as awards for innovation.

11. The overwhelming success of the Key Ninja and Wallet Ninja brands have resulted in significant counterfeiting by individuals and entities who unlawfully use the trademarks and goodwill built by Dynamite Marketing and Vante, and other manufacturers in this industry to sell cheap imitation counterfeits of Key Ninja and Wallet Ninja Products. Consequently, Dynamite Marketing has an anticounterfeiting program and regularly investigates suspicious websites and online marketplace listings identified in proactive Internet sweeps and reported by consumers.

12. These investigations have established that Defendants are using the various webstores on platforms such as Amazon, Wish, eBay, etc. to sell Counterfeit Products from foreign countries such as China to consumers in the United States and the State of Illinois, including the Northern District of Illinois. I personally analyzed each of the Infringing Websites and determined that Counterfeit Products were being offered for sale to residents of the United States and State of Illinois. I reached this conclusion through visual inspection of the products as they appeared on the Infringing Websites, the price at which the Counterfeit Products were offered for sale, other features commonly associated with websites selling counterfeit products, because Defendants offered shipping to Illinois, and because Defendants and the Infringing Websites do not conduct business with Dynamite Marketing and do not have the right or authority to use the Key Ninja and Wallet Ninja marks for any reason.

13. It is estimated that the Defendants are responsible for as many as 500,000 or more counterfeit Key Ninja and Wallet Ninja brand products being sold, amounting to over \$2,000,000

in lost revenue.

14. Each sale made by the Defendants through a webstore results in a direct loss to Dynamite Marketing. As the illegal marketplace for Key Ninja and Wallet Ninja Products grows on the Internet, the legitimate marketplace for Key Ninja and Wallet Ninja Products shrinks. Monetary damages cannot adequately compensate the Dynamite Marketing for ongoing infringement because monetary damages fail to address the loss of control and damage to the Dynamite Marketing's reputation and goodwill. Furthermore, monetary damages are difficult, if not impossible, to ascertain due to the inability to calculate measurable damage in dollars and cents caused to our reputation and goodwill by acts of infringement.

15. Dynamite Marketing's goodwill and reputation are irreparably damaged when the Key Ninja and Wallet Ninja Trademarks are used on goods not authorized, produced or manufactured by Dynamite Marketing. Moreover, brand confidence is damaged, which can result in loss of future sales and market share. The extent of harm to our reputation and goodwill and the possible diversion of customers due to loss in brand confidence are largely unquantifiable.

16. Dynamite Marketing is further irreparably harmed by the unauthorized use of the Key Ninja and Wallet Ninja marks because counterfeiters take away our ability to control the nature and quality of Counterfeit Products. Loss of quality control over goods bearing the Key Ninja and Wallet Ninja trademarks and, in turn, loss of control over our reputation, is neither calculable nor precisely compensable.

17. The sale of Counterfeit Products is likely causing and will continue to cause consumer confusion that weakens the Key Ninja and Wallet Ninja brand recognition and reputation. Consumers who mistakenly believe that the Counterfeit Products he or she has purchased originated from Dynamite Marketing will come to believe that Plaintiff offers low quality products. Inferior quality products will result in increased skepticism and hesitance in

consumers presented with genuine Key Ninja and Wallet Ninja Products, resulting in a loss or undermining of Plaintiff's reputation and goodwill. Indeed, there is damage to our reputation and goodwill even if a consumer knows that the goods he or she is purchasing are counterfeit.

Prospective consumers who see inferior Counterfeit Products used by others may mistakenly believe such goods to be genuine and may consequently develop a poor impression of Key Ninja and Wallet Ninja products. Such post-sale confusion results in further damage to Dynamite Marketing's reputation and correlates to a loss of unquantifiable future sales.

18. Dynamite Marketing is further irreparably damaged due to a loss of exclusivity. Dynamite Marketing's extensive marketing and innovative designs are aimed at growing and sustaining sales. The Key Ninja and Wallet Ninja marks are distinctive and signifies to consumers that the products exclusively originate from the Dynamite Marketing. When counterfeiters use the Key Ninja and Wallet Ninja marks on goods without authorization, the exclusivity of the Products, as well as Dynamite Marketing's reputation, are damaged and eroded, resulting in an a loss of unquantifiable future sales.

19. Dynamite Marketing will suffer immediate and irreparable injury, loss or damage if counterfeiters are allowed to continue to infringe upon the Key Ninja and Wallet Ninja registered Trademarks.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 11th day of November, 2018.

  
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Gene Komissarov  
CEO, Dynamite Marketing, Inc.